

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

VICENTE HERRERA,

Plaintiff,

v.

11-CV-127 JEC/WDS

CITY OF ESPANOLA, JULIAN GONZALES,
CHIEF OF LAW ENFORCEMENT, JUSTIN
ROMERO, DETENTION OFFICER IN HIS
OFFICIAL AND INDIVIDUAL CAPACITY,
AND JOHN DOE, DETENTION OFFICER IN
HIS OFFICIAL AND INDIVIDUAL CAPACITY,

Defendants.

**ORDER ADOPTING MAGISTRATE JUDGE'S FINDINGS AND
RECOMMENDATION AND DISMISSING CASE WITH PREJUDICE**

THIS MATTER is before the Court on U.S. Magistrate Judge Robert H. Scott's Proposed Findings of Fact and Recommended Deposition ("Findings and Recommendation"), filed October 4, 2012 (Doc. 36); Defendant Romero's Motion to Dismiss for Insufficient Process, filed July 7, 2012 (Doc. 22); Defendants City of Espanola and Julian Gonzales's Motion for Sanctions, filed July 16, 2012 (Doc. 23); and Plaintiff's Motion to Voluntarily Dismiss Federal Claims and Request for Remand to State District Court, filed September 27, 2012 (Doc. 35). None of the parties have timely objected to the Findings and Recommendation within the deadline prescribed by 28 U.S.C. § 636(b)(1)(C). *See also* Order of Reference (Doc. 32). The Court, therefore, adopts the Findings and Recommendation in its entirety.¹

¹Not only has Plaintiff consented to dismissal of her Complaint by failing to respond to the Motion for Sanctions and failing to object to Judge Scott's Finding and Recommendations, but the factual circumstances in this case also warrant the sanction of dismissal. *See Meade v.*

WHEREFORE,

IT IS ORDERED THAT:

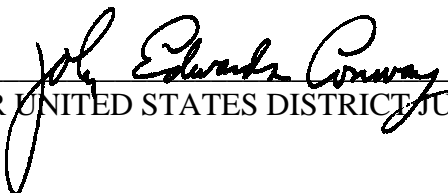
I. U.S. Magistrate Judge Robert H. Scott's Findings and Recommendation, filed October 4, 2012 (Doc. 36) is **ADOPTED**;

II. Defendant Romero's Motion to Dismiss for Insufficient Process, filed July 7, 2012 (Doc. 22) is **GRANTED** and Plaintiff's Complaint against Romero is dismissed with prejudice;

III. Defendants City of Espanola and Julian Gonzales's Motion for Sanctions, filed July 16, 2012 (Doc. 23), is **GRANTED** in that Plaintiff's Complaint is dismissed with prejudice, and **DENIED** as to attorneys' fees and costs; and

IV. Plaintiff's Motion to Voluntarily Dismiss Federal Claims and Request for Remand to State District Court, filed September 27, 2012 (Doc. 35) is **DENIED** as moot.

Dated November 5, 2012.



SENIOR UNITED STATES DISTRICT JUDGE

Grubbs, 841 F.2d 1512 (10th Cir. 1988). As set forth in the Findings and Recommendation, Plaintiff has failed to maintain communication with the Defendants, failed to comply with the applicable rules of procedure, and failed to pursue this action over the past two years. Dismissal is an appropriate action when "the aggravating factors outweigh the judicial system's strong predisposition to resolve causes on their merits." *Ehrenhaus v. Reynolds*, 965 F.2d 916, 918 (10th Cir. 1992). The Court finds that the *Ehrenhaus* factors weigh in favor of dismissal of this case, in its entirety, with prejudice.

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